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8 IN THE UNITED STATES DISTRICT COURT
9 DISTRICT OF OREGON

10 UNITED STATES OF AMERICA,

No. CR 11-467-10-MO

11 Plaintiff,

12 vs.

13 GREGORIO GUTIERREZ-MONTES, et al.,

14 Defendants.

**DEFENDANT GUTIERREZ-
MONTES' WAIVER OF
APPEARANCE and
DECLARATION
OF COUNSEL**

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16 COMES NOW Robert Reid, counsel for Defendant Gregorio Gutierrez-
17 Montes, and hereby submits the following Declaration of Counsel by way of setting
18 forth Defendant Gutierrez-Montes' waiver of his appearance at the status conference
19 held on January 23, 2012.

20 **DECLARATION OF COUNSEL**

21 (1) Defendant Gregorio Gutierrez-Montes does not speak English. At all
22 relevant times mentioned herein, my conversations with him were translated by
23 interpreter Terry Rogers.

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26 Page 1 --- DEFENDANT GUTIERREZ-MONTES' WAIVER OF
APPEARANCE and DECLARATION OF COUNSEL

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1 (2) I have met personally with the Defendant four times. On December 19,
 2 2011, I was already aware that the government would be asking for a trial date several
 3 months beyond the initial trial date setting. At that time I explained Mr. Gutierrez'
 4 constitutional and statutory speedy trial rights to him, as well as the concept of
 5 excludable delay, in simple terms. Mr. Gutierrez' agreed that he would prefer to be
 6 well prepared for trial rather than rush a trial date simply for expediency. I explained
 7 that he would have to waive, or give up, these speedy trial rights in order to have that
 8 occur. He agreed that he would waive these rights.

9 (3) I met with the Defendant again on January 10, 2012 at FDC Sheridan. I
 10 explained to him that there would be a hearing on January 23rd to discuss case
 11 scheduling and similar administrative matters. I told him he could be at the hearing
 12 or not, as he wished, (although I also added that in some cases I have seen Judges
 13 hold such hearings without asking that defendants be brought to the hearing).
 14 Defendant Gutierrez stated that he would like to be at the hearing, but if he was not
 15 brought to the court that would be fine with him too. I told him his preference
 16 would be made known, if he was to be given a choice of appearing or not appearing.

17 (4) Ultimately, I communicated with the Court's courtroom deputy that the
 18 defendant would like to be at the hearing, but wasn't insistent upon being there. The
 19 Marshal's office did not transport him to the hearing on January 23rd. I did not learn
 20 until January 18th that the Marshal's office would not be transporting Mr. Gutierrez to
 21 court on the 23rd, which was insufficient time for me to schedule a visit with him at
 22 FDC Sheridan to obtain a formal waiver.

23 (5) I believe that the defendant's lack of firm position to be, or not to be, at
 24

1 the Court on January 23rd can reasonably be interpreted as a waiver of appearance as
2 to the scheduling matters which were discussed at that hearing. None of these
3 scheduling matters were issues about which I would have consulted the defendant in
4 any event, as they are best determined solely by counsel.

5 RESPECTFULLY SUBMITTED this 31st day of January, 2012.

6 /s/ **Robert W. Reid**

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Robert Reid (OSB #81434)
Attorney for Defendant Gutierrez-Montes